

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File No. EB-05-SE-334
AboCom Systems, Inc.)	NAL/Acct. No. 200632100017
Hsinchu City, Taiwan)	FRN # 0007031842

MEMORANDUM OPINION AND ORDER

Adopted: April 20, 2007**Released: April 24, 2007**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we deny the petition for reconsideration filed by AboCom Systems, Inc. (“AboCom”). Abocom seeks reconsideration of a *Forfeiture Order*¹ issued by the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau on November 7, 2006, in the amount of twenty-five thousand dollars (\$25,000). In the *Forfeiture Order*, the Division found willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),² and Section 2.803(a) of the Commission’s Rules (“Rules”),³ involving AboCom’s marketing of wireless access points⁴ that do not comply with the terms of its equipment authorization and the requirements of Section 15.247(d) of the Rules.⁵

II. BACKGROUND

2. In 2005, the Division received a report from Industry Canada⁶ indicating that a wireless access point marketed under an equipment certification granted to AboCom, FCC ID MQ4ARM94,⁷ did not comply with Canada’s equipment certification standards. Specifically, the report from Industry Canada indicated that the device produced a spurious emission at frequency 2.6 GHz. The Division purchased a sample of the AboCom wireless access point and sent it to the Commission’s Office of Engineering and Technology (“OET”) Laboratory for testing. The OET Laboratory tested the device and determined that it produced a spurious emission⁸ on frequency 2.6 GHz that substantially exceeded the

¹ *AboCom Systems, Inc.*, Forfeiture Order, 21 FCC Rcd 13140 (Enf. Bur., Spectrum Enf. Div. 2006).

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a).

⁴ A wireless access point is a transmitter/receiver used to provide wireless internet access.

⁵ 47 C.F.R. § 15.247(d).

⁶ Industry Canada is a regulatory agency of the Canadian government.

⁷ AboCom received a grant of equipment authorization for the wireless access point under FCC ID MQ4ARM94 on April 22, 2004.

⁸ Section 2.1(c) of the Rules, 47 C.F.R. § 2.1(c), defines a spurious emission as an “[e]mission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information.”

limit specified by Section 15.247(d) of the Rules.

3. On March 2, 2006, the Division issued a letter of inquiry (“LOI”) to AboCom.⁹ In its April 17, 2006 response to the LOI,¹⁰ AboCom stated that, beginning May 31, 2004, it manufactured the wireless access point authorized under FCC ID MQ4ARM94 for both Hawking Technologies, Inc. (“Hawking”) and Phoebe Micro, Inc. (“Phoebe”).¹¹ AboCom’s response indicated that it shipped large quantities of the device to Hawking between May 31, 2004, and October 5, 2005, and to Phoebe between May 12, 2004, and June 14, 2005.¹² AboCom also provided a copy of a test report dated November 4, 2005, which purportedly showed that the device did not produce a spurious emission exceeding the limit specified by Section 15.247(d) of the Rules. Notably, however, the report was incomplete because it did not identify or describe the measurement procedures used.¹³

4. The OET Laboratory subsequently tested a second sample of the AboCom wireless access point and again found that it produced a spurious emission at 2.6 GHz that substantially exceeded the limit specified by Section 15.247(d). OET also determined that the device is capable of operating on frequencies beyond the 2.412 - 2.482 GHz range authorized by its equipment authorization.

5. On July 13, 2006, the Division issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) proposing a \$25,000 forfeiture to AboCom for marketing wireless access points that do not comply with the terms of its equipment authorization and the requirements of Section 15.247(d) of the Rules in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.¹⁴ Following AboCom’s failure to file a response to the NAL, the Division issued the *Forfeiture Order* affirming the violations and assessing a \$25,000 forfeiture.

6. In its petition for reconsideration of the *Forfeiture Order*, AboComm does not dispute the violations¹⁵ but seeks reduction of the forfeiture amount. AboCom argues that, except in the case of very large entities, the Commission rarely imposes a \$25,000 forfeiture, particularly in a case involving equipment manufacturing and marketing.¹⁶ AboCom asserts that a \$25,000 forfeiture is harsh in this instance because the variances of the wireless access point from Section 15.247(d) of the Rules and the equipment authorization granted by the Commission were inadvertent and only “theoretically harmful.”¹⁷ As such, AboCom further asserts that the marketing of the wireless access points has not been shown to

⁹ See Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to AboCom Systems, Inc. (March 2, 2006).

¹⁰ See Letter from Eric Oh-Yang, Chairman & Chief Executive Officer, AboCom Systems, Inc., to Brett Greenwalt, Engineer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 10, 2006) (“LOI Response”).

¹¹ The devices manufactured for Hawking were designated as Hawking model HWR54G and the devices manufactured for Phoebe were designated as Phoebe model AR315W.

¹² LOI Response, Exhibit B.

¹³ 47 C.F.R. § 2.947(b) and (c).

¹⁴ *AboCom Systems, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 7875 (Enf. Bur., Spectrum Enf. Div. 2006).

¹⁵ AboCom asserts that if “AboCom is able to resolve favorably to it [the question of whether AboCom’s wireless access points are compliant] the Bureau will be immediately advised.” Petition for Reconsideration at 1-2.

¹⁶ *Id.* at 2.

¹⁷ *Id.*

be part of a deliberate plan to evade or disregard the rules.¹⁸

III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹⁹ Section 1.80 of the Rules,²⁰ and the Commission’s *Forfeiture Policy Statement*.²¹ In examining AboCom’s petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.²² As discussed below, we conclude that the original \$25,000 forfeiture was fully consistent with these statutory provisions and the Commission’s precedent; accordingly, we deny Abocom’s petition for reconsideration.

8. First, we reject AboCom’s argument that the \$25,000 forfeiture amount should be reduced because, except in the case of very large entities, the Commission rarely imposes a \$25,000 forfeiture, particularly in a case involving equipment manufacturing and marketing.²³ In fact, forfeiture amounts of \$25,000 or more are not uncommon in equipment cases.²⁴ As discussed in the *NAL*, an upward adjustment from the \$7,000 base forfeiture amount to \$25,000 was warranted in this case because of the substantial number of non-compliant devices that AboCom marketed, the fact that the violations continued over a 17-month period, and AboCom’s ability to pay a forfeiture.²⁵ Regarding ability to pay,

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80.

²¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²² 47 U.S.C. § 503(b)(2)(D).

²³ Petition for Reconsideration, at 2.

²⁴ See, e.g., *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040 (2007) (assessing a \$75,000 forfeiture for equipment marketing violations); *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 1820, 1825 (2006) (proposing a \$1,000,000 forfeiture for equipment marketing violations), *response pending*; *ACR Electronics, Inc.*, Forfeiture Order, 21 FCC Rcd. 3698, 3707 (2006) (assessing a \$65,000 forfeiture for equipment marketing violations); *Pilot Travel Centers, L.L.C.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 23113 (2004) (proposing a \$125,000 forfeiture for equipment marketing violations), *consent decree ordered*, 21 FCC Rcd 5308 (2006); *Samson Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 4221 (2004) (proposing a \$35,000 forfeiture for equipment marketing violations), *consent decree ordered*, 19 FCC Rcd 24542 (2004); *Rocky Mountain Radar*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1334 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$25,000 forfeiture for equipment marketing violations); and *Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd. 458 (Enf. Bur., Spectrum Enf. Div. 2006) (proposing a \$25,000 forfeiture for equipment marketing violations).

²⁵ See, e.g., *San Jose Navigation, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 2873, 2877-8 (2006) (upwardly adjusting a proposed forfeiture on the basis of factors which included the volume of non-compliant devices distributed, and the three-year span in which such devices were marketed), *forfeiture ordered*, 22 FCC Rcd 1040 (2007); and *Bureau D’Electronique Appliquee*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 3445, 3448 (Enf. Bur., Spectrum Enf. Div. 2005) (upwardly adjusting a proposed forfeiture on the basis (continued....))

the Commission made clear in the *Forfeiture Policy Statement* that large or highly profitable entities, such as AboCom,²⁶ can expect forfeitures higher than those reflected in the base amounts.²⁷

9. We similarly reject AboCom's assertion that the \$25,000 forfeiture is harsh because it was no more than "inadvertently noncompliant" and its actions were not deliberate or intended to violate the rules.²⁸ Inadvertence or the lack of intent to violate the Commission's requirements is not a mitigating factor warranting reduction of a forfeiture.²⁹ Moreover, we disagree with AboCom's contention that the variances of the device were only "theoretically harmful."³⁰ Industry Canada initially reported the compliance issue with AboCom's wireless access points to the Enforcement Bureau after determining that the devices were causing harmful interference to a local wireless service provider of a subscription high speed internet and television service.³¹ In any event, it is well-established that the absence of harm is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.³²

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of the volume of unauthorized devices distributed, the five-year span in which such devices were marketed and ability to pay), *forfeiture ordered*, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (*"B.E.A."*).

²⁶ AboCom had revenues of approximately 4 billion Taiwan dollars in 2005 (approximately \$133 million in US dollars). Worldscope-International Company Profiles, April 21, 2006.

²⁷ Specifically, the Commission stated:

[O]n the other end of the spectrum of potential violations, we recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

Forfeiture Policy Statement, 12 FCC Rcd at 17099-100. See also *SBC Communications v. FCC*, 373 F.3d 140, 152 ("[A] company's ability to pay is a statutory factor the FCC may consider, and it is reasonable to expect that a large fine might be necessary to deter a large company like SBC.")

²⁸ Petition for Reconsideration at 2-3.

²⁹ See *Emery Telephone*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 23854, 23859 (1998) (inadvertence found not to be a mitigating circumstance), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999); and *B.E.A.*, 20 FCC Rcd at 17897 ("inadvertent mistakes" found not to mitigate violations).

³⁰ Petition for Reconsideration at 2.

³¹ See LOI Reponse at 131.

³² See, e.g., *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105, 16113 (2001) (rejecting claim that the forfeiture should be reduced because cable system took care to avoid interference before commencing unauthorized operation); *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975) (finding that "[t]he Commission not only is concerned with actual interference, but is concerned with the potential for interference"); and *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893, 17898 (Enf. Bur., Spectrum Enf. Div. 2005) (concluding that lack of interference from unauthorized devices does not warrant a reduction of the forfeiture).

10. In sum, we have examined AboCom's petition for reconsideration pursuant to the statutory factors prescribed by Section 503(b)(2)(E) of the Act, Section 1.80 of the Rules, and the Commission's *Forfeiture Policy Statement*. As a result of our review, we find that reduction of the forfeiture is not warranted and that the *Forfeiture Order* should be affirmed.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Act³³ and Section 1.106 of the Rules,³⁴ AboCom's petition for reconsideration of the *Forfeiture Order* IS DENIED and the *Forfeiture Order* IS AFFIRMED.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁵ Payment of the forfeiture must be made by check, money order or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³⁶

13. IT IS FURTHER ORDERED that copies of this *Memorandum Opinion and Order* shall be sent by facsimile and international registered mail to AboCom Systems, Inc., 1F No. 21 Yanfa, 2nd Road, SBIP, Hsinchu City, Taiwan and by facsimile and certified mail, return receipt requested, to its counsel, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

³³ 47 U.S.C. § 405.

³⁴ 47 C.F.R. § 1.106.

³⁵ 47 U.S.C. § 504(a).

³⁶ See 47 C.F.R. § 1.1914.